IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ROANOKE DIVISION

FEB 1 2 2009

JOHN F. CORCORAN, CLERK BY:

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DAMIEN JERMAINE BARNER,)
Plaintiff,) Case No. 7:08CV00376
v. SGT. BENTLEY, <u>ET AL</u> ., Defendants.	ORDER ORDER By: Glen E. Conrad United States District Judge

In accordance with the accompanying memorandum opinion, it is hereby

ORDERED

as follows:

- 1. Defendants' motion for summary judgment on the ground that plaintiff failed to exhaust administrative remedies as required under 42 U.S.C. § 1997e(a) is hereby **DENIED** as to the claim of excessive force by Defendants Bentley, Mullins, and Harrison on April 28, 2007, but defendants' motion is **GRANTED** as to all other claims, and these claims are dismissed without prejudice, pursuant to § 1997e(a);
- 2. The excessive force claim is **DISMISSED**, pursuant to 28 U.S.C. § 1915A(b)(1), as to the following defendants: Sgt. McQueen, B. J. Ravizee, and Larry Huffman; the clerk shall terminate these defendants from the lawsuit, as all claims against them have been dismissed: and
- 3. Defendants shall file any additional dispositive motion within twenty (20) days from entry of this order. If no such motion is received within the allotted time, the court will set the matter for a jury trial on the issues of excessive force and failure to exhaust administrative remedies.

ENTER: This 12^{10} day of February, 2009.

United States District Judge

JSUL Corres